

Bill No. 5237-09

No. 43-09-OR

## AN ORDINANCE

An Ordinance authorizing the extension of the term of Ordinance No. 57-07-OR, enacted December 18, 2007, allowing the Department of Public Works to take certain actions on behalf of County Council with respect to the issuance of highway occupancy permits, the grant of certain licenses, rights of entry and easements, and the amicable acquisition of certain real estate affecting County public work projects and other matters for calendar years 2008 and 2009.

**Whereas**, Article IV, Section 2 (k) of the Allegheny County Home Rule Charter (the "Home Rule Charter") vests County Council with the power and duty by ordinance to permit the use of County land, buildings or other real or personal property owned by the County; and,

**Whereas**, since adoption of the Home Rule Charter, County Council has processed numerous ordinances requested by the Department of Public Works to convey various licenses, rights-of-way, utility easements, and easements for the use of County real property; and,

**Whereas**, since adoption of the Home Rule Charter, County Council has also processed numerous ordinances approving the amicable acquisition of real estate for County public work projects, including but not limited to, County roads and bridges; and,

**Whereas**, the County Council desires to reduce the time needed for routine approvals of matter affecting County real estate that are inefficient, result in project schedule delays, inconvenience to the public and higher costs of administration; and,

**Whereas**, the County Council finds that approving a single ordinance with respect to matters identified in the title of this Ordinance will reduce overall delays and costs for administration and will result in increased efficiencies with respect to the operation of County government.

***The Council of the County of Allegheny hereby enacts as follows:***

### ***SECTION 1.      Incorporation of the Preamble.***

The provisions set forth in the preamble to this Ordinance are incorporated by reference herein in their entirety.

**SECTION 2.      Authorization to Grant Highway Occupancy Permits for Use of County Roads and Bridges.**

No person, public utility, private company, municipality or municipal authority shall occupy or perform any work upon or under a County highway or bridge without first securing a highway occupancy or bridge occupancy permit. County Council does hereby authorize the Department of Public Works to grant such highway and bridge occupancy permits so long as such actions shall promote public safety and welfare and shall not interfere with any existing or anticipated County governmental function. All such grants shall be consistent with sound engineering practices and the regulations of the Department of Public Works in effect on the date hereof or that may be hereafter adopted. County Council does further authorize the Director of the Department of Public Works, or his designee, to take any and all further actions as may be necessary or proper to carry out the authorization granted herein, including, but not limited to, the execution of the permits identified in this section. Not notwithstanding the foregoing, County Council shall have the right to rescind or revoke any action taken under the authority granted herein.

**SECTION 3.      Authorization To Grant Easements, Rights Of Entry And Licenses For Use Of County Real Estate.**

County Council does hereby authorize the Department of Public Works to grant easements, rights of entry and licenses for the use of County-owned real estate so long as such actions shall promote public safety and welfare and shall not interfere with any existing or anticipated County governmental function. The authorization granted herein shall include, but not limited to, execution of license agreements, rights-of-entry, authorizations to enter County owned property, cooperation agreements with municipalities and third parties, utility easements, right-of-way agreements, reimbursement agreements and other instruments that may affect County owned real estate. Notwithstanding the above, all such actions shall be subject to approval of the County Solicitor. County Council does further authorize the Director of the Department of Public Works, or his designee, to take any and all further actions as may be necessary or proper to carry out the authorization granted herein, including, but not limited to, execution of any writings or instruments identified in this section.. Not notwithstanding the foregoing, County Council shall have the right to rescind or revoke any action taken under the authority granted herein.

**SECTION 4.      Authorization to Amicably Acquire Real Estate for Public Works Projects.**

County Council does hereby authorize the Department of Public Works acquire, by amicable and administrative settlements, real estate for public works projects within the operating and capital budgets approved by County Council. Such public works projects shall include, but are not limited to, construction, reconstruction, replacement, relocation, installation, repair and expansion of County roads, bridges, parks and buildings. With respect to the authority provided herein the Department may acquire any interest in land it deems appropriate including easements, rights of ways, licenses or title in fee simple absolute. The Department of Public

Works shall be further authorized to obtain appraisals and title reports, to negotiate and acquire any required property, rights-of-way and easements; and to prepare any necessary agreements of sale and deeds or other instruments and notices evidencing such acquisitions of real estate. Notwithstanding the above, all such actions shall be subject to approval of the County Manager and County Solicitor. County Council does further authorize the Director of the Department of Public Works, or his designee, to take any and all further actions as may be necessary or proper to carry out the authorization granted herein, including, but not limited to, execution of any writings or instruments identified in this section.. Not notwithstanding the foregoing, County Council shall have the right to rescind or revoke any action taken under the authority granted herein.

***SECTION 5.        Authority to Approve Takings by Way of Eminent Domain Retained.***

Nothing contained in this Ordinance shall be deemed to authorize the Department of Public Works to acquire property through the right of eminent domain and by way of the filing of a declaration of taking without first seeking approval and authorization of County Council.

***SECTION 6.        Term of this Ordinance.***

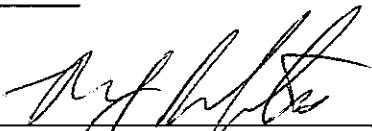
This Ordinance shall expire December 31, 2011.

***SECTION 7.        Severability. If any provision of this Ordinance shall be determined to be unlawful, invalid, void or unenforceable, then that provision shall be considered severable from the remaining provisions of this Ordinance which shall be in full force and effect.***

***SECTION 8.        Repealer. Any Resolution or Ordinance or part thereof conflicting with the provisions of this Ordinance is hereby repealed so far as the same affects this Ordinance.***

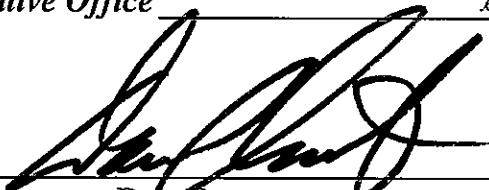
Enacted in Council, this 15<sup>th</sup> day of December, 2009

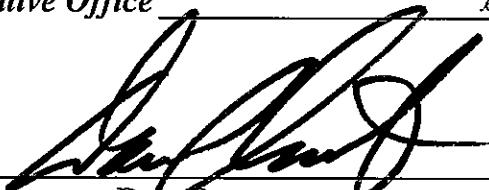
Council Agenda No. 5d 37-09



Rich Fitzgerald  
President of Council

Attest:   
Allegheny County Council

Chief Executive Office   
December 17, 2009

Approved:   
Dan Onorato  
Chief Executive

Attest:   
Donna Fodi  
Donna Fodi  
Executive's Secretary

## SUMMARY FOR DRAFT ORDINANCE

The purpose of the requested Ordinance is to extend the term of Ordinance No. 57-07-OR enacted December 18, 2007 and which will expire on December 31, 2009. Except for the new term, the language of the requested Ordinance remains the same as the language in the previous ordinance.

The Public Works Department is responsible for the County's 410 miles of road rights-of-way, several bridges off County roads and thousands of acres of numerous properties for the operations of parks, recreational trails and administrative buildings. The County also owns many excess parcels that are available to convey to interested parties. To carry out County functions and to accommodate the needs of other organizations for the health, safety and welfare of our citizens, we must convey and acquire real property on a routine basis.

Section 701.2, Paragraph A. authorizes "The County may acquire any real property necessary for carrying out any of its functions". Paragraph C. of the Administrative Code states "The approval of County Council shall be required for any action authorized by this Section."

However, obtaining approval of separate ordinances for each permit, license agreement, easement, authorization to enter and amicable right-of-way and easement acquisition is cumbersome. For example, our Department has also issued approximately 360 Highway Occupancy Permits each year to various utility companies and to developers for driveways and to connect storm-water facilities to existing County facilities.

In addition, we expect to submit draft ordinances in the near future to clear the rights-of-way to acquire necessary properties for several road and bridge reconstruction projects. Each year, we normally obtain several Rights-of-Entry to construct drainage facilities on private properties to outlet runoff from County roads and to benefit such properties by reducing flooding.

Reducing the cumbersome time to process an ordinance in each of these cases will reduce delays and the cost of administration. We propose that County Council consider approving a blanket Ordinance authorizing the Law Department and the Public Works Department to administer routine permits, conveyances and acquisitions of real property. Such matters include, but are not limited to:

- grants of licenses and rights-of-entry to others for to County property with a resulting benefit to the public
- grants of rights-of-way and easements on County property to utility companies for public benefit
- grants of Highway Occupancy Permits to others for constructing and maintaining facilities within County rights-of-way
- conveyance of excess real estate to public and non-profit organizations for public purposes
- acquisitions of rights-of-entry to build road-related facilities on private properties
- amicable acquisitions of parcels required for public works projects for costs not to exceed the approved budget
- acceptances of real property donated to the County for public purposes.

**MEMORANDUM**  
**OFFICE OF THE COUNTY MANAGER**

TO: Allegheny County Council

FROM: James M. Flynn, Jr.  
County Manager

DATE: November 25, 2009

RE: Proposed Ordinance

---

Attached is an Ordinance authorizing the extension of the term of Ordinance No. 57-07-OR, enacted December 18, 2007, allowing the Department of Public Works to take certain actions on behalf of County Council with respect to the issuance of highway occupancy permits, the grant of certain licenses, rights of entry and easements, and the amicable acquisition of certain real estate affecting County public work projects and other matters for calendar years 2008 and 2009.

The Allegheny County Law Department has reviewed this legislation prior to submitting it to Council.

I am requesting that this item be placed on the agenda at the next Regular Meeting of Council.